

In the Environment Court of New Zealand
at Auckland

I mua i te Kōti Taiao o Aotearoa
I te rohe o Tāmaki Makaurau

ENV-2020-AKL-000101

under: the Resource Management Act 1991

in the matter of: an appeal pursuant to clause 14(1) of the First Schedule
to the Resource Management Act 1991

between: **Auckland/Waikato and Eastern Fish and Game
Councils**
Appellant

and: **Waikato Regional Council**
Respondent

Notice of Mercury NZ Limited's wish to be party to proceeding

Dated: 28 September 2020

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NOTICE OF MERCURY NZ LIMITED'S WISH TO BE PARTY TO PROCEEDINGS

Section 274, Resource Management Act 1991

To The Registrar
Environment Court
Auckland

- 1 Mercury NZ Limited (*Mercury*) wishes to be a party to the appeal by Auckland/Waikato and Eastern Fish and Game Councils (*Fish & Game*) against a decision of the Waikato Regional Council on Proposed Plan Change 1 to the Waikato Regional Plan (*PC 1*).

Mercury's interest in these proceedings

- 2 Mercury made a submission and a further submission about the subject matter of the proceedings.
- 3 Mercury is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (*RMA*).
- 4 Mercury is interested in those issues that may affect its ability to operate, maintain, upgrade and develop its renewable electricity generation assets (in particular the Waikato Hydro System), including those parts of the proceedings related to:
- 4.1 Policies 5, 11, 12, 14 and 17;
 - 4.2 The expansion of various objectives and policies to include reference to "other contaminants" (Objectives 1-3, Policies 1, 3, 4, 11, 12, 16 and 19);
 - 4.3 The reinstatement of a revised section 3.11.1 of the notified version of PC 1 related to the 'Values and Uses' section in the notified version of PC 1; and
 - 4.4 Table 3.11-1.

Relief opposed by Mercury

- 5 Although Mercury supports Fish & Game's request for clarification of what "high water quality" means in the context of Policy 13, overall Mercury opposes the relief sought because it is largely beyond of scope of PC 1 and does not:
- 5.1 Promote the sustainable management of natural and physical resources;
 - 5.2 Promote the efficient use and development of natural and physical resources;
 - 5.3 Meet the reasonable foreseeable needs of future generations;
 - 5.4 Result in the most appropriate plan provisions in terms of section 32 of the RMA;
 - 5.5 Implement the Council's functions of section 30 of the RMA;
 - 5.6 Give effect to higher order planning documents under section 67(3) of the RMA including the National Policy Statement for Renewable Electricity Generation 2011 and the Waikato Regional Policy Statement; and/or

5.7 Ensure consistency with good resource management practice.

6 Without limiting the generality of the above, the specific reasons for Mercury's opposition of the relief sought relating to Policies 5, 11, 12, 14, and 17, the proposed Values and Uses, the addition of "and other contaminants" in various objectives and policies and Table 3.11-1 include:

Policy 5

6.1 The Notice of Appeal seeks to include a new definition of "offset/compensation" in relation to Policy 5. This definition would be relevant to Policy 5 but would also apply to Policies 12 and 13.

6.2 Mercury opposes the proposed definition, including because the definition:

- (a) appears to address each contaminant separately and does not take an integrated effects management approach to the wider effects of a proposed activity;
- (b) includes language that is not sufficiently clear regarding the methodology for assessing the outcome of the proposed measures;
- (c) inappropriately requires a "net gain" outcome for all activities without consideration of the scale or significance of the residual effects that are being offset/compensated for, or of the wider context and benefits of the relevant activity; and
- (d) usage should not imply an obligation to offer offsetting/compensation, rather such measures should be made available to applicants and able to be considered by the consent authority.

Policy 11

6.3 The Notice of Appeal seeks to amend Policy 11 by requiring the provision for the continued operation and development of regionally significant infrastructure to be subject to achieving Objective 1.

6.4 Mercury opposes this relief as Objective 1 is by its nature a long term and relatively general objective. It is unclear how a specific consent application related to regionally significant infrastructure brought at a given point in time would be able to establish that Objective 1 had been achieved in the context of the relevant application. Rather, the current wording of Policy 11 is more appropriate as it requires regard be had to the need to achieve Objective 1.

6.5 The Notice of Appeal also seeks to amend Policy 11 to relate to contaminants beyond the four PC 1 contaminants. Mercury opposes this relief as it goes beyond the scope of PC 1 and is therefore inappropriate.

Policy 12

6.6 The Notice of Appeal seeks to expand the focus of Policy 12 beyond PC 1's four target contaminants. As noted above, such relief goes beyond the scope of PC 1 and is inappropriate.

6.7 The Notice of Appeal also seeks changes to Policy 12 which are related to the definition proposed for offset/compensation related to Policy 5. For the reasons outlined above with respect to Policy 5, that relief is opposed by Mercury.

Policy 14

- 6.8 The Notice of Appeal seeks to amend Policy 14 to include new matters for consideration when determining the appropriate duration of consents.
- 6.9 Mercury opposes the sought relief, including because:
- (a) Any apparent or anticipated difficulty with consent reviews is not an issue that should be attempted to be resolved through a policy concerning consent duration;
 - (b) It is also inappropriate to second guess future legislative changes post 2035 which may include allocative regimes with respect to assimilative capacity. Rather, it is appropriate for the treatment of existing consented activities to be a matter considered by central and local government as and when such reform is proposed and passed; and
 - (c) Requirements for a steady progression towards the 80-year water quality attribute states are already referenced in Policies 12 and 13 and such progression is therefore not relevant to considerations of duration of consents. Moreover, the Notice of Appeal's sought relief with respect to "straight line" progression is potentially inconsistent with references to "steady" progression in Policies 12 and 13.

Policy 17 and Table 3.11-1 – Attribute States

- 6.10 The Notice of Appeal seeks a range of amendments to Table 3.11-1 (and its application) including the setting of additional short and long term targets, and the inclusion of additional water quality attributes.
- 6.11 The Notice of Appeal seeks amendments to Policy 17 to include new attributes for all wetlands, at minimum for nutrients, sediment and the hydrological regime.
- 6.12 Mercury opposes any amendments to Policy 17 and Table 3.11-1 which:
- (a) go beyond the scope of PC 1 as it relates to four target contaminants;
 - (b) introduce entirely new measures to an item not subject to attributable states in PC 1;
 - (c) seek to include target states that are not supported by sufficient data or scientific certainty; and/or
 - (d) where the application of the relevant attribute is not appropriate to the relevant sub-catchment setting due to its physical characteristics.

Other contaminants

- 6.13 The Notice of Appeal seeks to expand the focus of various PC 1 provisions (including Objectives 1-3, Policies 1, 3, 4, 11, 12, 16 and 19) beyond PC 1's four target contaminants.
- 6.14 As noted above, with respect to Policy 11, such relief is opposed by Mercury as it goes beyond the scope of PC 1 and is therefore inappropriate.

Reinstatement of selected 'Values and Uses' - 3.11.1

- 6.15 The Notice of Appeal seeks the reinstatement of selected parts of the 'Values and Uses' section of the notified version of PC 1.

6.16 While Mercury supports the reinstatement of the 'Values and Uses' section of PC 1, Mercury opposes the Notice of Appeal's approach of selecting only some aspects of the wider values and uses that were identified and formed the basis of PC 1. The Notice of Appeal's approach leads to an unbalanced and unrepresentative approach to the values and uses of the catchment.

Mediation

7 Mercury agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Signed for and on behalf of Mercury NZ Limited by its solicitors and authorised agents
Chapman Tripp



Catherine Somerville-Frost
Partner
28 September 2020

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Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch